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Federal Communications Commission
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MARC SOBEL

Applicant for Certain Part 90 Authorizations
in the Los Angeles Area and Requestor of
Certain Finder's Preferences

MARC SOBEL & MARC SOBEL d/b/a
AIR WAVE COMMUNICATIONS

Licensee of Certain Part 90 Stations in the
Los Angeles Area

WT DOCKET No. 97-56

REPLY TO OPPOSITION TO
MOTION FOR SPECIAL RELIEF

To: **The Honorable John M. Frysiak**
Presiding Administrative Law Judge

Marc D. Sobel d/b/a Air Wave Communications ("Sobel"), by his attorney, hereby replies to the
Wireless Telecommunications Bureau's Opposition to Motion for Special Relief ("Opposition").

The Bureau charges that "Sobel at least implicitly accuses the Bureau of delaying *Federal Register* publication ... to maximize the time [for filing] motions to enlarge," *Opposition* at ¶ 3, asserts the Bureau "has never engaged in any scheme to delay publication," *Id.* at ¶ 4, and complains bitterly that "Sobel's suggestion to the contrary is entirely unsupported, unjustified, and smacks of bad faith." *Id.* It would seem that, like Lady MacBeth, the Bureau doth protest too much. Sobel simply noted that (a) the Bureau did not timely submit a summary of the designation order to the Publications Branch, thereby bearing a large measure of the responsibility for the delay in publication, and (b) the Bureau has already benefitted from the delay by filing a motion to large as a matter of right, under Section 1.229(a) of the Rules, well after the time that normally would have required a showing of good cause under Section 1.229(b)(2).

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The Bureau does not deny that it was responsible for preparing the summary of the designation order, and offers no explanation whatsoever for its delinquency in discharging that duty. The Bureau states, without offering any support,¹ that the summary was received by the Publications Branch on 25 April 1997. *Opposition* at p. 2, n.1. If that is so, it does not explain why (a) on 1 May 1997, two different staff members of the Publications Branch, after searching the logs carefully, advised undersigned counsel that the order was not yet scheduled for publication because no summary had been received, or (b) why undersigned counsel was not specifically told this when he inquired of Bureau counsel about the status of *Federal Register* publication on that same day, namely 1 May 1997.²

This is not to suggest intentional misrepresentation rather than honest confusion--but even honest confusion can produce inequities. It is inherently unfair to give one party unilateral control over events that trigger important procedural dates. Even if the Bureau is accurate in its assertion that the summary was tendered on 25 April 1997, it was still inappropriate for the Bureau to wait nearly three months to discharge its duty, and then take advantage of that delay by submitting a motion to enlarge based on information long in the Bureau's possession.³ What is done, it would seem, is done; but the presiding judge at least can prevent the Bureau from taking further procedural advantage of its own failure to timely discharge its duties.

Finally, the Bureau charges that Sobel ignores Section 1.229(b)(2) of the Rules, although it would appear that the Bureau is actually referring to Section 1.229(b)(3). In any event, Sobel will hereby clarify his request. Sobel does not seek to modify the provisions Section 1.229(b)(3), but rather asks that the rule be applied to any filing ostensibly made under 1.229(a) without regard to *Federal Register* publication date. In short, Sobel simply asks the presiding judge to declare the 1.229(a) deadline to have

¹ Sobel is not suggesting that the Bureau should have offered sworn verification for this point, but merely notes here that the Bureau is applying a double standard, *i.e.*, complaining that Sobel with making "unsupported" allegations, *Opposition* at ¶ 2, while doing the same thing itself.

² Undersigned counsel was told, in vague terms, only that "steps" were being taken to effect publication but that it might be "a couple weeks."

expired, so that any motions to enlarge must now be evaluated pursuant to Sections 1.229(b)(3) and/or 1.229(c). To the extent Sobel's motions states otherwise, it is hereby modified.

Dated this 15th day of May, 1997

A handwritten signature in black ink, reading "Robert J. Keller", with a checkmark to the left of the first letter "R". The signature is written over a horizontal line.

By: Robert J. Keller
Its Attorney

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³ The Bureau asserts that "efforts to obtain publication in the *Federal Register* began well before the filing of Sobel's motion. *Opposition* at ¶ 4. Even if that is true, Sobel would have preferred that the efforts had begun "well before" the Bureau filed its motion to enlarge!

CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for Marc D. Sobel d/b/a Air Wave Communications, hereby certify that on this 15th day of May, 1997, I caused copies of the foregoing *REPLY TO OPPOSITION TO MOTION FOR SPECIAL RELIEF* to be sent by first class United States mail, postage prepaid, except as otherwise indicated below, to the presiding officer and the parties in WT Docket No. 97-56, as follows:

|||||
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